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January 7, 2004

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

RECEIVED

JAN - 7 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

33731.00002

Re: *Ex Parte* Notice  
Docket No. 00-230  
(Secondary Markets)

Dear Ms. Dortch:

On January 7, 2004, the undersigned representatives of Salmon PCS, LLC ("Salmon") were joined by Andrew Tollin and Brian Fontes, representatives of Cingular Wireless, LLC ("Cingular"), in a meeting with the Commission personnel listed in the cc: portion of this letter. The purpose of the meeting was to discuss a possible spectrum manager leasing arrangement that Salmon and Cingular are considering and on which they are seeking staff input. Attached is a detailed outline of the topics discussed, copies of which were distributed at the meeting.

The parties did not make any detailed presentation relating to the issues that are pending in the secondary markets proceeding (WT Docket No. 00-230) on reconsideration or pursuant to the *Further Notice of Proposed Rulemaking*.<sup>1</sup> Nonetheless, because of the possible relationship of the issues discussed with matters that may be under consideration in the ongoing rulemaking proceeding, the parties are filing this notice out of an abundance of caution.

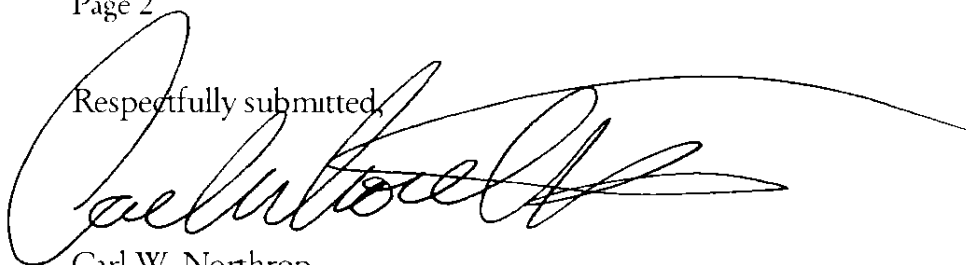
Kindly refer any questions in connection with this notice to the undersigned.

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<sup>1</sup> FCC 03-113 released October 6, 2003

Marlene H Dortch, Secretary  
January 7, 2004  
Page 2

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Carl W. Northrop, written over the phrase "Respectfully submitted,".

Carl W. Northrop  
Christine M. Crowe  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Shellie Blakeney  
John Branscome  
Rita Cookmeyer  
Paul D'Ari  
Neil Dellar  
Kathy Harris  
Erin McGrath  
Paul Murray  
Roger Noel  
Kelly Quinn  
Linda Ray  
Margaret Wiener

## **Presentation to the FCC Regarding Salmon/Cingular Spectrum Manager Lease**

### **I. The Current Situation:**

- Salmon is a very small business designated entity (DE) controlled by Crowley Digital Wireless LLC, which in turn is controlled by entrepreneur George D. Crowley Jr
- Cingular Wireless is a major investor in Salmon and provides management and other services to Salmon pursuant to FCC-approved operating agreements
- Salmon holds licenses in 45 markets covering a total population of approximately 12 million people
- Salmon has constructed and is operating commercial systems in multiple markets and will be rolling out commercial service in additional markets between now and 2006

### **II. Salmon Would Like to Become a Spectrum Lessor Due to Changed Circumstances:**

- The FCC's *Spectrum Leasing Order* provides welcomed flexibility in the business arrangements that license holders now can pursue.
- The final outcome of the *NextWave* case dramatically alters the Salmon business plan.
  - Salmon was unable to secure 34 of the 79 licenses on which it was the high bidder at Auction 35 including some of the most populous markets (e.g., Atlanta, Baltimore, Boston, Dallas, Denver, Houston, Los Angeles, Tampa, Washington, D.C.).
- A spectrum manager leasing arrangement is a potentially attractive alternative for Salmon which now holds licenses in 45 relatively small and dispersed markets

### **III. Commission Review and Approval of the Proposed Salmon Spectrum Lease in the Near Term is Necessary and Appropriate:**

- Salmon, Cingular and third party lenders have a compelling interest in making sure that Salmon maintains its designated entity status.
- Although prior FCC approval of a spectrum manager lease is not required, the parties are unwilling to proceed without a degree of certainty:
  - The spectrum leasing rules are brand new, making it impossible to know how they will be applied in practice.

- There is sufficient uncertainty regarding the application of the new leasing rules to DEs -- particularly whether the *Intermountain Microwave* criteria apply only to the DE's leasing operations or also to the underlying operations of the facilities -- to make further guidance appropriate
- Reviewing and approving a proposed Salmon/Cingular spectrum lease would be consistent with the FCC's rules and policies
  - Section 1.41 of the FCC rules expressly allows interested parties to file "Informal requests for Commission action".
  - The *Spectrum Leasing Order*, para.125, provides that "interested parties might seek informal guidance *or a formal determination* from the Commission regarding a particular lease arrangement by means of a letter to the Commission " (emphasis added)
- Time is of the essence
  - Salmon cannot afford to devote substantial time and money to a spectrum lease that languishes unapproved
  - The lease arrangement that makes sense today could be vastly different than the arrangement that will make sense months from now when many more markets have been brought on line
- FCC approval of a Salmon spectrum lease will serve the public interest by adding clarity and thereby increasing the prospect that the secondary markets policy will reap benefits for consumers and promote the DE program

**IV Salmon and Cingular are Considering Pursuing a Spectrum Manager Lease Containing the Following Elements:**

- The primary business of Salmon would change from wholesale or retail PCS operations to spectrum leasing:
  - Cingular will lease all (or substantially all) of the Salmon spectrum capacity and assume front-line responsibility for the design and construction of facilities
  - Salmon will rely on the facilities constructed by Cingular to meet applicable build-out requirements and thus will have a strong business incentive to ensure that facilities are constructed and operated in accordance with FCC rules.

- Crowley Digital will retain *de jure* control over Salmon PCS:
  - The ownership and control of Salmon will remain unchanged with DE-eligible Crowley Digital retaining control of the Management Committee and the key officer positions.
- Crowley Digital and Salmon will retain *de facto* control over the spectrum leasing business under the traditional *Intermountain Microwave* criteria
- Salmon will satisfy the new *de facto* control criteria in the *Spectrum Leasing Order*:
  - Salmon will remain responsible for Cingular's compliance with FCC rules and policies as they pertain to the Salmon spectrum
  - The new spectrum lease agreement will contain reporting requirements that give Salmon actual working knowledge of all license related activities.
  - Salmon will have rights of inspection and the right to modify or suspend any operations that are not in accordance with all applicable technical, environmental, safety and other legal requirements
  - All filings required to be made under the Communications Act or the FCC rules with regard to the Salmon spectrum will be made by Salmon